IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Bail Appl..No. 5242 of 2007()

CRIME NO.236 OF 2007 OF MANJESWARAM POLICE STATION

: PETITIONER/ACCUSED

D.SIDDIQUE, S/O. AHAMMED,
BASTIPADAVU, P.O.KADAMBAR, THALAKKALA,
KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT & STATE

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1. STATE - REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE STATION HOUSE OFFICER,
(CRIME NO.236 OF 2007 OF MANJESWARAM POLICE
STATION), KASARAGOD DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 5242 of 2007

Dated this the 5th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 452 and 324 I.P.C. The crux of the allegation is that the petitioner entered the shop of the defacto complainant armed with dangerous weapons with culpable intention and allegedly attacked the defacto complainant with such dangerous weapons after so entering the shop. There is an allegation that a dispute which had arisen between them had led to the commission of the crime. Investigation is in progress. The crime was registered on 4.8.07. The incident took place on 3.8.07. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The allegations raised are not justified. At any rate, it cannot be assumed that the petitioner had entered the shop after making preparations for committing any offence. In these circumstances, anticipatory bail may be granted to the petitioner, it is prayed.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. This, the learned Public Prosecutor submits, is a fit case where the petitioner must resort to the ordinary and regular procedure of appearing before the Investigating Officer or the learned Magistrate. He must then seek regular bail in the ordinary course, submits the learned Public Prosecutor .

4. I find merit in that opposition by the learned Public Prosecutor. I am unable to discern any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, which discretion is to be exercised only sparingly and in exceptional cases in aid of justice. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must resort to the ordinary course of appearing before the op or the learned Magistrate having jurisdiction. He must then seek regular bail.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/ true copy PA To Judge